IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 200 of 2007
In
COMPANY APPLICATION No. 352 of 2007
In OFFICIAL LIQUDATOR REPORT No. 115 of 2007
With
CIVIL APPLICATION No. 324 of 2007
In O.J.APPEAL No. 200 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FERNHILL TRADING COMPANY - Appellant(s)
Versus
DEPUTY SECRETARY INDUSTRIES & MINES DEPARTMENT & 4 - Opponent(s)

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Appearance :

MR AS VAKIL for Appellant(s) : 1,
MR MG NAGARKAR for Opponent(s) : 1 - 2.
MR DS VASAVADA for Opponent(s) : 3,
NOTICE UNSERVED for Opponent(s) : 4,
MR JS YADAV for OFFICIAL LIQUIDATOR for Opponent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 28/12/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the order dated 29.8.2007 passed in Company Application No. 352 of 2007 in Official Liquidator Report No. 115 of 2007 in Company Petition No. 205/96, this appeal has been filed by a firm, which wanted to have inspection of the assets of M/s. Priyalakshmi Mill, a unit of Gujarat State Textile Corporation Ltd. (in liquidation and hereinafter referred to as 'the company'), which was to be effected by the Official Liquidator appointed by this court.

2. The facts giving rise to the appeal are as under:

2.1 As the company was ordered to be wound up, the Official Liquidator attached to this court wanted to sell the assets of the company and, therefore, he had given an advertisement in certain dailies on 12.4.2007 and 13.4.2007. In pursuance of the said advertisement, the prospective buyers were invited to

inspect the assets of the company situated at Vadodara. For the purpose of inspection, certain amount was to be paid by the prospective buyers and the inspection was to take place before 17.4.2007. After having inspection of the assets of the company, the willing buyers had to submit their offers to the Official Liquidator on or before 20.4.2007.

2.2 The appellant herein – the Applicant in Company Application No. 352 of 2007 – did not give any application for taking inspection of the assets of the company before the prescribed date, i.e., 17.4.2007. In the circumstances, it was not permitted to take inspection and, therefore, it had approached this court by filing Company Application No. 352 of 2007 praying for a direction to the Official Liquidator to supply the appellant a copy of the terms and conditions of the tender referred to in the advertisement and to permit it to take inspection of the assets of the company, which were situated at Vadodara.

2.3 After hearing the present appellant, the Official Liquidator, etc., the learned Company Judge rejected the said application by the impugned order dated 29.8.2007. While rejecting the application, the learned Company Judge observed in the order that the present appellant did not submit the offer within the prescribed time and it had also not deposited the Earnest Money Deposit (EMD). So as to test bona fides of the appellant, the learned Company Judge

wanted to know whether the appellant was prepared to deposit the EMD and late entry fee so as to enable the appellant to participate in the auction, but the learned advocate appearing for the present appellant had shown his disinclination for making the payment. In the circumstances, the behaviour of the appellant company did not inspire any confidence and, therefore, the application made by the present appellant was rejected by the learned Company Judge by the impugned order.

2.4 Being aggrieved by the impugned oder, the present appeal has been filed by the appellant.

3. It is pertinent to note certain developments, which had taken place, when the present appeal was notified for hearing on earlier occasions. On 31.8.2007, while issuing notice, this court had directed that “the appellant shall deposit EMD of Rs. 50,00,000/- and also late entry fee at the rate of 15% p.a. on the amount of EMD for a period from 20.4.2007 to 3.9.2007. The amount shall be deposited with the Official Liquidator by two demand drafts of Rs. 50,00,000/- and Rs. 3,00,000/- in favour of the Official Liquidator, Priyalakshmi Mill (Unit of Gujarat State Textile Corporation). The normal inspection fees shall be paid to the Official Liquidator.” This court had further observed in para 4 of the said order that “in case the appellant complies with the above stipulations, the appellant will be permitted to participate in the auction

also.”

4. In pursuance of the aforesaid interim order dated 31.8.2007, the appellant had deposited in all Rs. 53,00,000/- by way of two demand drafts. The appellant, as submitted by learned advocate Shri Vakil in the course of hearing before this court, was not interested in purchase of the assets of the company and, therefore, was not inclined to participate in the auction, though it had already deposited the aforesaid two cheques.

5. On 10.9.2007, when the appeal was again notified before this court, this court had directed that Rs. 50,00,000/-, which had been deposited by the appellant by way of EMD, be returned to it, but the question with regard to refund of Rs. 3,00,000/- was not decided by this court and it was observed that the said question would be decided on the next date of hearing.

6. Thereafter, the appeal was placed before the present Bench and learned advocate Shri Vakil appearing for the appellant has submitted that the appellant should be refunded Rs. 3,00,000/-, which the appellant had deposited in pursuance of order dated 31.8.2007 because, the appellant was not interested at all in purchase of the assets of the company. It has been submitted by him that in pursuance of the direction given by this court on 10.9.2007 in the appeal, Rs. 50,00,000/- have already

been returned to the appellant and the question with regard to return of Rs. 3,00,000/- only remained.

7. It has been submitted by the learned advocate that usual inspection charges had been paid by the appellant before taking inspection and the appellant's representative had also taken inspection of the assets of the company, which are offered for sale. As the appellant was not at all interested in purchase of the assets of the company, it did not even participate in the auction. In the circumstances, according to the learned advocate, Rs. 3,00,000/- must be refunded to it as, according to the learned advocate, no special effort has been made for the appellant by the office of the Official Liquidator and, therefore, there is no reason for this court to ask the appellant to pay any further amount to the Official Liquidator.

8. On the other hand, the learned advocates appearing for the Official Liquidator as well as for the labour union have submitted that Rs. 3,00,000/- must not be refunded to the appellant because, a special favour was done by this appellate court to the appellant by permitting it to take inspection even at a belated stage.

9. We have heard the learned advocates at length. Looking to the facts of the case, in our opinion, the appellant was directed to pay Rs. 3,00,000/- because, the appellant wanted to take inspection of the assets

of the company so as to take a decision whether it should submit its offer for purchase of the assets of the company by filling up the tender form.

10. The appellant ought to have taken inspection of the assets of the company on or before 17.4.2007 and should have submitted its offer before 20.4.2007 as per advertisement given by the Official Liquidator on 12/13.4.2007, if it was interested in purchase of the assets.

11. After the last date for submitting the offer was over, the appellant had approached this court by filing Company Application No. 352 of 2007 with a prayer that it be permitted to take inspection of the assets and even participate in the auction. For the purpose of submitting its offer, the appellant also wanted to see the assets of the company and, therefore, it had also made a request to have inspection of the assets of the company. At the relevant time, before the learned Company Judge, the learned advocate appearing for the company did not show readiness to deposit the EMD and late entry fees and, therefore, the application submitted by the appellant had been rejected by the impugned order.

12. Though the time to submit the offer was over, when the appeal was filed by the appellant, this appellate court wanted to give an opportunity to the appellant to have inspection of the assets of the company so as to enable the appellant to decide

whether it should participate in the auction. The only purpose with which the appellant wanted to have inspection of the assets of the company was to decide whether it should participate in the auction for purchase of the assets of the company. There was no special reason for having inspection of the assets of the company if the appellant had no intention to participate in the auction. By virtue of an interim order dated 31.8.2007, the appellant deposited Rs. 50,00,000/- by way of EMD because it was interested in purchase of the assets of the company. Had the appellant not been interested in purchase of the assets of the company, it would have never thought of filing an appeal against the impugned order or for taking inspection of the assets of the company.

13. This appellate court has done a special favour to the appellant by permitting it to have inspection of the assets of the company even at a belated stage, and as stated hereinabove, in para 4 of the order dated 31.8.2007, this appellate court had also permitted the appellant to participate in the auction provided it deposited two demand drafts as referred to hereinabove.

14. The appellant deposited two demand drafts, in all, for Rs. 53,00,000/- and this fact denotes that the appellant was interested in purchase of the assets of the company. Of course, upon taking inspection of the assets of the company, the appellant didn't think it proper to submit an offer

for purchase of the assets and, therefore, it dropped the idea of participating in the auction, but only by way of a special favour it was permitted to have inspection of the assets so as to enable it participate in the auction.

15. Had the appellant thought about participating in the auction, the appellant would have deposited Rs. 50,00,000/- by way of EMD at an earlier point of time. As the appellant had not deposited the amount of EMD, this court had, as a special case, given permission to the appellant to have inspection provided it also pays 15% interest on the amount of EMD for a period commencing from 20.4.2007 to 3.9.2007 under order dated 31.8.2007. Thus, the intention of this court was to the effect that the appellant must pay interest on the said amount of EMD, which had not been deposited earlier with the Official Liquidator. Otherwise, the appellant would not have been directed on 31.8.2007 to deposit 15% of the amount of EMD for the period referred to hereinabove.

16. Now, when the appellant is not inclined to purchase the assets of the company, it has prayed that the amount of Rs. 3,00,000/- also be refunded to it. In our opinion, the appellant cannot be permitted to withdraw the entire amount because the intention of this appellate court was to see that the appellant pays interest on the amount, which it had not deposited by way of EMD with the Official

Liquidator and only for that purpose Rs. 3,00,000/- was directed to be paid by the appellant.

17. Even on 10.9.2007, this court (Coram: M.S. Shah & K.A. Puj, JJ.) permitted the appellant to withdraw Rs. 50,00,000/- as the appellant was not interested in purchase of the assets of the company, but no order with regard to return of Rs. 3,00,000/- was made. In the circumstances, in our opinion, the appellant is not entitled to the entire amount of Rs. 3,00,000/-.

18. If one calculates the amount of interest @ 15% p.a. on the EMD of Rs. 50,00,000/- for the period commencing from 20.4.2007 to 3.9.2007, as indicated by this court in its order dated 31.82007, the amount of interest would come to approximately Rs. 2,59,000/-. Instead of calculating the amount at the time of passing the order dated 31.8.2007, possibly the court had roughly arrived at Rs. 3,00,000/- by way of late entry fee.

19. Looking to the aforesaid facts of the case, in our opinion, the appellant should not be refunded Rs. 3,00,000/-, but it may be refunded Rs. 41,000/-, being the excess amount deposited by it. We give such a direction for the reason that the interest, as proposed to be calculated by this court on 31.8.2007, comes to Rs. 2,59,000/-, whereas the appellant was asked to deposit Rs. 3,00,000/-. As the appellant has deposited Rs. 41,000/- more, we direct the

Official Liquidator to refund the said amount within 10 days from today.

20. In view of the fact that the appellant has not participated in the auction, in our opinion, this appeal would not survive for the reason that during the pendency of this appeal, the appellant was given a chance to take inspection of the assets of the company and to participate in the auction.

21. In the aforesaid circumstances, the appeal has become infructuous and we, therefore, dispose of the same as such. Notice is discharged.

22. Learned advocate Shri Vakil appearing for the appellant has prayed that implementation of this order be stayed for a month.

23. However, learned advocate Shri Yadav appearing for the Official Liquidator has fairly submitted that Rs. 2,59,000/-, which are to be treated as late fee charges, shall be kept in a separate account and the amount shall not be appropriated for a period of one month from today.

24. In view of the above statement, no stay as prayed for by learned advocate Shri Vakil is granted.

Civil Application No. 324 of 2007

No order in view of disposal of the appeal.

(Anil R. Dave, J.)

(Z.K. Saiyed, J.)

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